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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,150	09/07/2001	Dan Dixon	112701-317	9214

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EXAMINER

SAYALA, CHHAYA D

ART UNIT

PAPER NUMBER

1761

7

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/936,150	DIXON ET AL.
	Examiner	Art Unit
	C. SAYALA	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 5/6/03.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-32 is/are pending in the application.

4a) Of the above claim(s) 28-32 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-27 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All   b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> .	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of Group I claims 1-27 in Paper No. 6 is acknowledged.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10, 12-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brescia et al. (US Patent 5869121) in view of Clausen (US Patent 4039692), GB 2237497 and Martin et al. (US Patent 4781939).

Brescia et al. teach a fried pet food made from protein (col. 2, lines 30+) and starch (col. 2, lines 39+) in a thermally gelable mixture (col. 2, lines 23 and 47) which also contains preservatives (col. 4, line 27). The thermally gelable matrix is formed into pieces that are fried. At col. 3, lines 3-15 the reference teaches that the gellable mixture is fed into an emulsion mill. Col. 3, lines 28-30 teaches ejecting the heated mixture from the mill into a holding tube. The moisture content in the final product is less than about 20% by weight (col. 3, last line). The reference teaches that the fried product is packed into suitable packaging (col. 4, lines 32-3).

The reference does not teach the moisture content as claimed, which is, at least about 25% by weight. This reference also does not teach the particular packaging method claimed, a pouch or a retortable, sealed container.

Clausen also teaches a fried pet food which contains protein and flours of farinaceous material such as wheat, corn, etc. (col. 2). The ingredients included are gums, gelatins, etc. Col. 3, lines 10-12. The invention includes the embodiment of adding water to the mixture if necessary, so that the moisture content of the fried product is between 35-60 wt%, and preferably 35-45% (see col. 4, lines 25-40). The pH of the product is said to be typically, between 5.5 to 8.0 (col. 4, lines 25-40).

GB 2237497 teaches a pet food that is a mixture of protein and cereals which would naturally include starch, preservatives and deep-frying the mixture. Pages 1-2. The product is flash-fried (see page 4) and packed in a sealed pouch (col. 2, alst 2 lines). See also claims 1, 3-4, 6-7. Note that the patent teaches the benefits of deep-frying at page 2, lines 1-5, namely, it develops meaty flavors and improves palatability and pasteurizes the product.

Martin et al. teach a meat emulsion, heating the emulsion, coagulating to form a firm emulsion mass and injecting steam under pressure into said meat emulsion to facilitate layering of the meat emulsion and forming discrete pieces having a plurality of distinct layers bonded together. The meat is then subjected to canning and retorting procedures. See col. 8, lines 40-68.

It would have been obvious to one of ordinary skill in the art to add the water content shown in Clausen to the mixture of Brescia et al., because of the similarities of

the inventions being drawn to similar products as described above and because it is well known that the palatability and acceptability of a pet food product with a greater content of moisture is better than one which is dry or has a low moisture content. Pet food products on the market are typically packaged in pouches or cans and to use the methods of the GB patent or Martin et al patent and package the pet food of Brescia et al. in a pouch or in a can would have been an obvious choice. Furthermore, Martin et al teach that retorting cans in commercial canning procedures for pet foods was known in the art at the time the invention was made and this would have been obvious to one of ordinary skill in the art. See col. 1, line 50, col. 8.

3. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brescia et al. (US Patent 5869121) in view of Clausen (US Patent 4039692), GB 2237497 and Martin et al. (US Patent 4781939) and further in view of Koschak et al. (US Patent 5004624) or Burkwall, Jr. et al. (US Patent 4191783) or Bartsch (US Patent 4011345).

The primary references are as described as above. They do not show the pH of the food mixture. Koschak et al. teach a semi-moist pet food that is stabilized by using acidulants to maintain a pH less than 4.7. See col. 2. Burkwall, Jr. et al teach stabilizing pet food by using an acidic compound to maintain the pH between 4 and 6.8. See claim 1 and claim 20. Bartsch teaches a semi-moist pet food that has a moisture content between 15-50% and an acid content that lowers the range of the pH to between 4.2 to 5.9 to provide stability to the pet food. See col. 4, lines 44-68 and claims

1-6. It would have been obvious to one of ordinary skill in the art at the time the invention was made to add an acid to maintain the pH between 4.5 and 5.2 so that the pet food of Brescia et al. which only has a moisture content of 5-16% that has been modified to be semi-moist so that the palatability and acceptability are improved, could be stabilized by such addition to keep the pH in the range 4.5-5.0. Note that '783 states at col. 3, lines 49-53 that by such a modification not only is the desired moisture level achieved so that the palatability and texture are improved, but at the same time, the semi-moist quality and microbiological stability are maintained.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA at Group 1761, telephone number (703) 308-3035.

The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is 703-308-0661.

  
C. SAYALA  
Primary Examiner  
Group 1700.